Supreme Court, U.S.
FILED

99 968 DEC 7 1999

OFFICE OF THE CLERK

No.

IN THE

SUPREME COURT OF THE UNITED STATES

FRANK RAYMOND HERNANDEZ,

Petitioner,

v.

THE STATE OF TEXAS,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO
THE TEXAS COURT OF APPEALS
FOR THE FIFTH DISTRICT

PETITION FOR WRIT OF CERTIORARI

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29pp

QUESTIONS PRESENTED

1. Does the Due Process Clause of the Fourteenth Amendment require Texas trial courts to admonish individuals who plead true to probation violation allegations of the consequences of such plea, and, if so, what is the extent of the required admonition?

2. Does the Due Process Clause of the Fourteenth Amendment require Texas trial courts to ascertain whether a plea of true to probation revocation allegations is made knowingly and intelligently, i.e., with awareness of the realistic consequences of the plea.

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Frank Raymond Hernandez, Petitioner, petitions for a writ of certiorari to review the judgment of the Texas Court of Appeals for the Fifth District in this case affirming the trial court's revocation of his probations and the imposition of five year sentences. He seeks resolution of two important issues relating to the process that is due to a person faced with revocation of probation—issues which have not been but ought to be decided by this Court: What admonitions, if any, must be administered to a person who pleads true to probation revocation allegations. And, whether a court may accept a plea of true to revocation allegations without ascertaining that the plea is made knowingly and intelligently, i.e., with awareness of the critical consequences of the plea.

OPINION BELOW

The opinion of the court of appeals is not reported. *Hernandez v. State*, Nos. 05-97-00915-CR and 05-97-00952-CR, Tex.App. Dallas. A copy of the opinion is appended hereto as Appendix B, *infra*.

JURISDICTION

The court of appeals affirmed the revocations of Mr. Hernandez's probations and upheld the imposition of sentences on 26 February 1999. A petition for discretionary review filed with the Texas Court of Criminal Appeals was refused without opinion on 8 September 1999. *See* Appendix A, *infra*. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1257.

CONSTITUTIONAL PROVISION INVOLVED

Section 1 of the Fourteenth Amendment to the Constitution of the United States provides, in relevant part:

> . . . [N]or shall any State deprive any person of life, liberty, or property without due process of law; . . .

STATEMENT

Mr. Hernandez was charged in separate indictments with aggravated assault (Cause No. F95-76106-HS) and engaging in organized criminal activity (Cause No. F96-19377-KS). On 11 October 1996 he pleaded guilty to both charges and, pursuant to a plea bargain, was sentenced in each case to 10 years confinement, which was probated for a period of five years, plus a fine. On 27 February 1997 the State of Texas moved to revoke Mr. Hernandez's probation in each case alleging *inter alia* that on or about 8 February 1997 he violated a condition of his probations by committing the offense of carrying on or about his person a handgun.[1]

A hearing on the State's motion to revoke Mr. Hernandez's probation was convened on 7 March 1997. Mr. Hernandez pleaded "Not True" to the allegation. RR[2] 4. Dallas police officer Eduardo Ibarba testified that at 3:00 o'clock, a.m., on 8 February 1997 he made a traffic stop of a vehicle in which Mr. Hernandez was a passenger. RR 7-8. Because the driver (Jose Duran) could not satisfac-

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[1] "Condition a" imposed upon Mr. Hernandez the duty to not violate any laws of the State of Texas. Thus, in order to be entitled to a revocation of his probation, the State was required to prove that he violated the law of the State of Texas which prohibits possessing a firearm. §46.02 Tex. Penal Code.

[2] Reporter's Record.

torily explain how he came into possession of the vehicle, the driver was arrested for traffic violations. An inventory of the vehicle revealed a diaper bag in the rear seat which contained a magazine to .45 handgun. RR 13. Suspicious that the vehicle might contain a handgun, Ibarba searched the vehicle and found a .45 handgun "on the hump of the transmission under the back seat." RR 14. According to Ibarba, Mr. Duran and Mr. Hernandez each denied knowledge of the handgun, RR 15-16, however Mr. Hernandez acknowledged the diaper bag was his. RR 16. Michelle Zaldivar testified that she was living with Mr. Hernandez; that upon being told of officer Ibarba's encounter with Mr. Hernandez she went to the scene where she told officer Ibarba that the diaper bag belonged to her; and that she had used the vehicle in question earlier in the day to travel to her mother's at which time she left the diaper bag in the car. RR 24-26. Jose Duran testified that the handgun in question was his. RR 36-37, 44. Based on the evidence the trial court found "that the evidence substantiates a finding of true to the allegation in the State's motion" to revoke probation. At that juncture, the proceedings were recessed. RR 52. Thereafter, Mr. Hernandez announced to the trial court that he had decided to change his plea to true. He agreed with the trial court's recitation that a plea bargain had been reached whereby in return for his plea of true Mr. Hernandez would receive a five year sentence. Following the introduction of documents reflecting the plea bargain agreement, Mr. Hernandez was sentenced to five years confinement in each case. RR 53-54.[3]

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[3] A copy of these proceedings is included as Appendix D.

On appeal Mr. Hernandez argued that failure of the trial court to admonish him as to the consequences of his pleas of true to the motions to revoke his probations and the failure of the trial court to inquire into the voluntariness of his pleas of true deprived him of his constitutional rights and rendered the pleas invalid.[4] The court of appeals responded by merely pointing out that "[t]he admonishments required by article 26.23 of the code of criminal procedure do not apply to probation revocation proceedings," and by stating that the only consequence that resulted from the decision to change his plea to true was the finding that the State's allegation was true. *Hernandez v. State, supra,* slip op. 2. On discretionary review, Mr. Hernandez again asserted his rights under the Fourteenth Amendment to the Constitution of the United States arguing that, in the context of the facts of this case, the trial court was obliged by due process considerations (a) to admonish Mr. Hernandez that by pleading true he waived his right to challenge on appeal the sufficiency of the evidence and (b) to ensure that Mr. Hernandez's plea of true was knowingly and intelligently entered given the consequence that he was, by pleading true, waiving his right to challenge the sufficiency of the evidence to support the revocation of his probations. **Petition for Discretionary Review,** *Hernandez v. State* I-11, No. 0619-99, Tex.Cr.App.

REASONS FOR GRANTING THE WRIT

Under applicable Texas law, a plea of true to allegations of probation violation forecloses a variety of rights accorded a probationer who pleads not true to such alle-

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[4] Appellant's Brief 6-8, *Hernandez v. State,* No. 05-97-00952-CR, Tex. App.—Dallas).

gations. A plea of true admits the truth of the allegations and deprives a probationer of an opportunity to challenge the sufficiency of the State's evidence with respect to the revocation allegation at the hearing and in the appeal that is permitted following a revocation of probation. The plea of true authorizes the court to revoke probation and impose a sentence of confinement,[5] and denies the probationer an opportunity for appellate review of any issue not preserved by written motion or raised on appeal with the permission of the trial court.[6] Despite these serious consequences which materially affect a probationer's freedom, Texas does not require trial courts to admonish probationers, prior to accepting a plea of true, of any consequence of such plea, nor does Texas require the trial court to find that a plea of true was made knowingly, intelligently, or voluntarily. *Harris v. State*, 505 S.W.2d 576, 578 (Tex.Cr.App. 1974).

"The Due Process Clause of the Fourteenth Amendment imposes procedural and substantive limits on the revocation of the conditional liberty created by probation." *Black v. Romano*, 471 U.S. 606, 610 (1985).

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[5]Article 42.12, §23, TEX.CODE CRIM.PRO.; *Moses v. State*, 590 S.W.2d 469 (Tex.Cr.App.1979)(a plea of true in a probation revocation proceeding is sufficient, standing alone, to support a revocation of probation, even in the face of defensive issues raised by the probationer at the hearing.

[6]The right to appeal from a probation revocation order is limited to the propriety of the revocation, *White v. State*, 929 S.W.2d 502, 503 (Tex.App.—Texarkana 1996, no pet.), and is subject to the restrictions contained in article 44.04, TEX CODE CRIM. PRO., which limit appeals in cases where the accused has received a plea-bargained sentence, *Castro v. State*, 662 S.W.2d 460, 461 (Tex.App.—Corpus Christi 1983, pet. ref'd). A plea of true entered in probation revocation proceedings precludes review on appeal of the sufficiency of the evidence to support the revocation. *Cole v. State*, 578 S.W.2d 127, 128 (Tex.Cr.App. 1979).

These limits encompass some, but not all of the rights traditionally associated with trials of criminal charges. In probation revocation proceedings, the accused is entitled to written notice of the claimed violations of his probation, to disclosure of the evidence against him, to the opportunity to be heard in person and to present witnesses and documentary evidence, written findings relating to the reasons for revocation, and a neutral and detached hearing body and decision maker. *Gagnon v. Scarpelli,* 411 U.S. 778, 786 (1972). Other rights traditionally associated with trials are applied to probation revocation proceedings on a case-by-case basis, such as the right to counsel and the right to cross-examine adverse witnesses. *Gagnon v. Scarpelli, supra,* 411 U.S. at 790.

At the core of these protections are the fundamental precepts of due process which accord a probationer the opportunity to defend against the allegations that he violated conditions of his probation, *Black v. Romano, supra,* 471 U.S. at 612, and which require sufficient evidence to support any finding that results in the loss of the probationer's liberty. *Id.* at 616-617. Since a probationer has the right to rely upon the implicit promise that his probation will be revoked and his liberty taken from him only if he violates one of the conditions imposed upon him, *Young v. Harper,* 520 U.S. 143, 147 (1997); *Morrissey v. Brewer,* 408 U.S. 471, 482 (1972), it follows that a probationer is entitled to protection against the revocation of his probation upon less than sufficient evidence and is entitled to know the fundamental critical consequences of his plea of true. "The function of legal process, as that concept is embodied in the Constitution, is to minimize the risk of erroneous decisions." *Greenholtz v. Nebraska Penal Inmates,* 442 U.S. 1, 13

(1979). Because the "quantum and quality of the process due in a particular situation depend upon the need to serve the purpose of minimizing the risk of error," due process is necessarily a flexible concept that must be geared to the particular need. *Id.*

In order to assure that important constitutional rights are not improperly withheld from an accused, this Court has long required that the record must establish an accused was made aware of such rights and, in the case of a waiver of such rights, that the record demonstrate an awareness and understanding of the rights and an understanding rejection of the offer of those rights. *Boykin v. Alabama*, 395 U.S. 238, 242-243 (1969). Only if it can be determined that an accused was aware of a right can it be concluded that the accused understood the right and thereafter knowingly and intelligently waived it. The most effective way to satisfy these demands of due process occurs when the court "spreads on the record" in the form of an admonition and colloquy everything necessary to a determination of whether an accused constitutionally waived an important right. *Boykin v. Alabama, supra*, 395 U.S. at 242, 244.

A second aspect of due process is involved whenever an accused admits to wrongdoing: the accused must have a complete understanding of the charge against him. Voluntariness, in a constitutional sense, means an intelligent admission that conduct constitutes criminal behavior. *Henderson v. Morgan*, 426 U.S. 637, 644-645 (1976). As with the due process requirement that waivers of constitutional rights be "spread on the record," the due process requirement that an accused have a complete understanding of the accusation against him is typically satisfied by admonitions and colloquies made on the record. "Normally the record contains either an explanation of the

charge by the judge, or at least a representation by defense counsel that the nature of the offense has been explained to the accused." *Id.* at 647.

Probation proceedings undoubtedly differ from trials and do not implicate the full panoply of rights associated with trials. However, they each have certain important similarities and an important common possible consequence—the loss of a citizen's liberty. Becasuse of that, various due process protections used to guard against unjustified risks of error with respect to trials have been applied to probation revocation proceedings. Given what is at stake when a probationer pleads true in Texas, the requirement that the judge admonish the probationer of the basic rights and consequences involved in pleading true is as important and as necessary as in pleas of guilty. It cannot be determined from the record in this case that Mr. Hernandez was aware that by pleading true he was surrendering his right to challenge on appeal the sufficiency of the evidence to establish that he had committed the offense alleged in the motion to revoke probation.[7]

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[7] Had Mr. Hernandez elected to stand by his plea of not true and appeal the court's finding that the "evidence substantiates a finding of true," it is likely he would have succeeded in having his revocation reversed. In *In the Matter of F.G.*, 511 S.W.2d 370 (Tex.Civ.App.—Amarillo 1974, no writ), the court reversed a probation revocation that was based upon the identical charge made against Mr. Hernandez. A pistol was found in a car under the seat in which F.G. was seated. The court of civil appeals held the evidence insufficient to establish the commission of the offense of carrying a prohibited weapon because of the presence of another person in the car and the absence of any affirmative link shown between the child and the pistol. In *Payne v. State*, 480 S.W.2d 732 (Tex.Cr.App. 1972), the accused was found riding as a passenger in the front right-hand seat of a car occupied by another man. Pistols were found in a cooler on the rear seat. The court held that the evidence was insufficient to sustain the conviction.

[footnote continued]

Admonitions of the type recommended in *Boykin v. Alabama* and in *Henderson v. Morgan* would have assured that Mr. Hernandez was aware of the consequences of his plea. The need for admonitions is underscored by the unique circumstances of this case—the contested hearing followed by the plea of true. Only if the court had made an inquiry into the reasons for the change in plea could anyone now know that Mr. Hernandez's plea of true was voluntary, in the constitutional sense, and made as a result of an intelligent choice with knowledge of the consequences.

In *Summerville v. State*, 301 S.W.2d 913 (Tex.Cr.App. 1957), the accused was driving a vehicle occupied by "three or four other people" in which a pistol was found in the glove compartment. Noting that there was no evidence the accused owned the vehicle, the court held that the mere fact he was driving the car occupied by other persons was insufficient to establish a violation of the law prohibiting carrying a pistol.

CONCLUSION

Certiorari should be granted to review the decision of the lower court and determine whether the failure of the trial court to admonish Mr. Hernandez about his plea of true prior to the entry of that plea, and the failure of the trial court to warn him of the critical consequences of that plea (and, in particular, of the fact that by pleading true he would waive his right to appellate review of the sufficiency of the evidence to establish that he violated his probation).

Respectfully submitted,

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Telecopier: (214) 691-2984
Counsel for Petitioner.

APPENDIX A

OFFICIAL NOTICE FROM
COURT OF CRIMINAL APPEALS OF TEXAS
P.O. BOX 12305, CAPITAL STATION,
AUSTIN, TEXAS 78711

September 8, 1999
COA#: 05-97-00952-CR
RE: Case No. 0619-99
STYLE: HERNANDEZ, FRANK RAYMOND

On this day, the Appellant's Petition for Discretionary Review has been REFUSED.

Troy C. Bennett, Jr., Clerk

COPY

BILL HILL
DISTRICT ATTORNEY
133 N INDUSTRIAL BLVD Lb-19
DALLAS TX 75207

APPENDIX B

Affirmed and Opinion Filed February 26, 1999

[SEAL]

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-97-00915-CR
No. 05-97-00952-CR

FRANK RAYMOND HERNANDEZ, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 282nd Judicial District Court
Dallas County, Texas
Trial Court Cause Nos F-95-76106-HS, F96-19377-MKS

OPINION

Before Justices Whittington, Roach and O'Neill
Opinion By Justice Whittington

After being convicted of aggravated assault and engaging in organized criminal activity, Frank Raymond Her-

nandez was placed on community supervision. Subsequently, the State sought to revoke appellant's community supervision on the ground that appellant violated condition (a) of his conditions of community supervision by carrying a handgun. After a hearing, the trial court found the State's allegation to be true. Appellant then changed his plea from not true to true. The trial court revoked community supervision. In two points of error, appellant contends the trial court erred in not admonishing appellant of the consequences of changing his plea to true and the trial court should have withdrawn its finding of true before accepting appellant's plea of true. We will affirm.

In his first point of error, appellant contends the trial court should have admonished him of the consequences of changing his plea from not true to true. The admonishments required by article 26.13 of the code of criminal procedure do not apply to probation revocation proceedings. *See Harris v. State*, 505 S.W.2d 576, 578 (Tex. Crim. App. 1974); *Rylander v. State*, 970 S.W.2d 174 Tex. App.—Fort Worth 1998, no pet.) (per curiam). Moreover, appellant does not identify any harm caused by the lack of an admonishment. The trial court had already made a finding that the State's allegation was true. There were no further consequences appellant wo would suffer by his decision to change his plea. We conclude that appellant has not shown any harm. *See High v. State*, 964 S.W.2d 637, 638 (Tex. Crim. App. 1998); *see also* TEX. R. APP. P. 44.2(b). We overrule appellant's first point of error.

In his second point of error, appellant contends the trial court should have withdrawn its finding of true before accepting appellant's subsequent plea of true. By failing to withdraw the plea, appellant asserts, the trial

court subjected appellant to double jeopardy by finding the revocation allegations to be true twice. Appellant's right against double jeopardy protects against a second prosecution for the same offense following either an acquittal or a finding of guilty and against multiple prosecutions for the same offense. *See Ex parte Ward*, 964 S.W.2d 617, 624 (Tex. Crim. App.), *cert. denied*, 119 S.Ct. 66 (1998). Revocation proceedings are administrative in nature—they do not result in a finding of guilt or innocence. *See State v. Nash*, 817 S.W.2d 837, 841 (Tex.App.—Amarillo 1991, pet. ref'd). In the instant case, whether appellant's community supervision was revoked on the court's finding of true or on appellant's plea of true, the punishment he received would be imposed for the underlying offense. *See Ex parte Tarver*, 725 S.W.2d 195, 197 (Tex. Crim. App. 1986). Thus, after finding the State's allegations to be true, the trial court retained the discretion to continue, modify, or revoke community supervision. *See id.* Because appellant was not subjected to any additional criminal penalty and his guilt on the firearm charge was not adjudicated, we conclude appellant was not subjected to double jeopardy. *See Ward*, 964 S.W.2d at 624. Accordingly, we overrule appellant's second point of error.

We affirm the trial court's judgments.

/s/ Mark Whittington
MARK WHITTINGTON
JUSTICE

Do Not Publish
Tex. R. App. P. 47.3

APPENDIX C

FORM 4
(REV. 09/01/94)

F-9619377-MKS

IN THE 282ND JUDICIAL DISTRICT COURT
OF DALLAS COUNTY, TEXAS

THE STATE OF TEXAS

VS.

FRANK RAYMOND HERNANDEZ

JUDGMENT REVOKING COMMUNITY SUPERVISION

JANUARY TERM, A.D., 1997
JUDGE PRESIDING: KAREN J. GREENE
DATE OF JUDGMENT: 03/07/97

ATTORNEY FOR STATE.
REGINA CLARK

ATTORNEY FOR DEFENDANT:
CYNTHIA BARBARE

OFFENSE CONVICTED OF: ENGAGING IN ORIGANIZED CRIMINAL ACTIVITY

DEGREE: FIRST

DATE OFFENSE COMMITTED: 06/03/96

TERMS AND CONDITIONS VIOLATED
AND GROUNDS FOR REVOCATION:

SEE ATTACHED MOTION TO REVOKE

AS SET OUT IN STATES: FEBRUARY 28, 1997
MOTION TO REVOKE SUPERVISION.

ORIGINAL PUNISHMENT ASSESSED:
SENTENCED TO IDTDJC: 10 YEARS –
FINE: $500.00
COMMUNITY SUPERVISION: 5 YEARS
P/FINE: (————————)

FINDINGS ON DEADLY WEAPON: NO FINDING
BIAS OR PREJUDICE, AND/OR
FAMILY VIOLENCE:

PUNISHMENT AND PLACE OF CONFINEMENT:

5 YEARS CONFINEMENT IN THE INSTITUTIONAL DIVISION OF THE TEXAS DEPARTMENT OF CRIMINAL JUSTICE AND A FINE OF $500.00

DATE TO COMMENCE: 03/07/97

DATE OF SENTENCE: 03/07/97 COSTS: NO

TIME CREDITED: 1/7/96 - 1/7/96; 6/3/96 - 6/5/96;
2/26/97-3/7/97
RESTITUTION/REPARATION: NO

CONCURRENT UNLESS OTHERWISE SPECIFIED.

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APPENDIX D

EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS OF MARCH 7, 1997

* * *

[53] THE COURT: All right. We're back in the courtroom on the two cases on Frank Raymond Hernandez.

Mr. Hernandez, I believe you've talked with your attorney and you have now filled out the paperwork, and you've decided to change your plea to true; is that correct?

THE DEFENDANT: Yes, ma'am.

THE COURT: All right. Your understanding is that the Court will accept that plea and assess your punishment at five years in the penitentiary; is that correct?

THE DEFENDANT: Right.

THE COURT: All right. Does the State have anything to offer?

MS. CLARK: The signed pleas of true, Your Honor, and ask the Court to take judicial notice of the entire contents of the Court's file, and additionally ask to admit State's Exhibit No. 1, Defendant's signed Plea of True and Stipulation of Evidence, the Indictment, the Judgment and sentence, the Order placing the Defendant on probation, the Motion to Revoke, the Motion to Proceed to Adjudication, the capias and the warrant.

THE COURT: Okay.

[54] MR. GAONA: No objeection, Your Honor –

THE COURT: Admitted.

MR. GAONA: – with the stipulation that that one section of the revocation was withdraw.

THE COURT: Right. And I've already marked through allegation J on both cases.

All right. That's admitted.

Do you have anything to produce on punishment?

MR. GAONA: No, Your Honor, I do not.

THE COURT: All right. Is there any legal reason why your client should not be sentenced at this time?

MR. GAONA: No, Your Honor.

THE COURT: All right. Mr. Hernandez, is there anything you want to say to the Court?

THE DEFENDANT: No.

THE COURT. All right. Then, it is the Order, Judgment and Decree of this Court that you be taken by the Sheriff of Dallas County and by him safely held and transported to an authorized receiving agent of the penitentiary where you shall be confined for five years.

I remand you to the custody of the Sheriff.

END OF PROCEEDINGS

APPENDIX E

282ND JUDICIAL DISTRICT COURT
DALLAS COUNTY TEXAS

No. F9619377S

THE STATE OF TEXAS

VS.

FRANK RAYMOND HERNANDEZ

MOTION TO REVOKE PROBATION

COMES NOW the State of Texas by and through her Criminal District Attorney and would show the Court the following:

That FRANK RAYMOND HERNANDEZ, Defendant was duly and legally convicted in the above entitled and numbered cause in the 282nd Judicial District Court of Dallas County, Texas. on the 11th day of October, 1997 A.D. of the offense of

ENGAGING IN ORGANIZED CRIMINAL ACTIVITY, AS CHARGED IN THE INDICTMENT

and sentenced to the State penitentiary for a period of 10 years, then placed on probation for a period of 5 years,

That Defendant has violated the following conditions (a & j) of said probation in that

(SEE ATTACHED)

This violation occurred after October 11, 1996, and during the term of probation.

WHEREFORE, the State prays that said Defendant be cited to apply before this Honorable Court and show cause why his probation should not be revoked; and that upon a final hearing, the probation heretofore granted to Defendant be revoked.

This the 27th day of February, A.D. 1997.

JOHN VANCE
District Attorney
Dallas County, Texas

BY: /s/ [Illegible]
ASSISTANT DISTRICT ATTORNEY

A copy of this motion was delivered to the Defendant on the 28th day of February, A.A. 1997.

/s/ [Illegible]
COMMUNITY SUPERVISION OFFICER

282ND JUDICIAL DISTRICT COURT
DALLAS COUNTY TEXAS

No. F95761068

THE STATE OF TEXAS

VS.

FRANK RAYMOND HERNANDEZ

MOTION TO REVOKE PROBATION

COMES NOW the State of Texas by and through her Criminal District Attorney and would show the Court the following:

That FRANK RAYMOND HERNANDEZ, Defendant was duly and legally convicted in the above entitled and numbered cause in the 282nd Judicial District Court of Dallas County, Texas on the 11th day of October, 1997 A.D. of the offense of

AGGRAVATED ASSAULT, SERIOUS BODILY INJURY, AS CHARGED IN THE INDICTMENT

and sentenced to the State penitentiary for a period of 10 years, then placed on probation for a period of 5 years.

That Defendant has violated the following conditions (a & j) of said probation in that

(SEE ATTACHED)

This violation occurred after October 11, 1996, and during the term of probation.

WHEREFORE, the State prays that said Defendant be cited to apply before this Honorable Court and show cause why his probation should not be revoked; and that upon a final hearing, the probation heretofore granted to Defendant be revoked.

This the 27th day of February, A.D. 1997.

JOHN VANCE
District Attorney
Dallas County, Texas

BY: /s/ [Illegible]
ASSISTANT DISTRICT ATTORNEY

A copy of this motion was delivered to the Defendant on the 28th day of February, A.A. 1997.

/s/ [Illegible]
COMMUNITY SUPERVISION OFFICER

282nd JUDICIAL DISTRICT COURT
DALLAS COUNTY, TEXAS

No. F9619377S

THE STATE OF TEXAS

VS.

FRANK RAYMOND HERNANDEZ

(a) Commit no offenses against the laws of this State or any other State of the United States and do not possess a firearm during the term of Community Supervision.

(On or about February 8, 1997, in Dallas County, Texas, FRANK RAYMOND HERNANDEZ, did unlawfully, knowingly, and intentionally carry on and about his person a handgun.)

(j) Obtain a substance abuse evaluation on or before January 15, 1997, faithfully participate in any recommended treatment as specified by the evaluation and as directed by the supervision officer until released by the Court.

(FRANK RAYMOND HERNANDEZ failed to obtain a Court approved substance evaluation on or before January 15, 1997, as instructed.)

ML#: C202958